

### REMARKS

The Official Action has imposed a restriction requirement and has identified three groups of claims, namely, Group I including Claims 1-12, 14, 15, 43-45, 51, 53 and 54 drawn to a system, Group II including Claims 31-38 and 55 drawn to an apparatus and Claims 46-50 drawn to an apparatus. As listed above, however, the restriction requirement failed to address a number of claims including method Claims 16-30, 41 and 42 and several dependent system claims (Claims 39 and 40). On or about May 27, 2009, Applicant's undersigned representative spoke with the Examiner who indicated that the claims that were not addressed by the restriction requirement (including the method claims) should have been included in Group I along with the system claims. As such, Group I therefore includes Claims 1-12, 14-30, 39-45, 51, 53 and 54.

At the outset, the restriction requirement is improper and is therefore traversed. In this regard, MPEP §803 indicates that "[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." Further, MPEP §803(I) states that "[t]here are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent ...; and (B) There would be a serious burden on the examiner, if restriction is not required". Still further, MPEP §808 states that "[e]very requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statements of conclusion) why each invention *as claimed* is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween".

In support of the restriction requirement, page 4 of the Official Action states:

5. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

In this instance, however, the stated rationale for the “serious search and examination burden” rings hollow and it is submitted that the search and examination of all of the claims can be made without a serious burden upon the Examiner as evidenced by the prior search and examination conducted in this application. Indeed, this restriction requirement follows five substantive Official Actions which have all been the product of repeated searches and examinations of all of the claims. Moreover, the most recent Amendment did not amend the different groups of claims in such a manner as to suddenly increase the burden upon the Examiner, but instead comparable amendments were made to claims in each of the groups,

thereby allowing the continued search and examination of all of the claims with no serious burden upon the Examiner in the same fashion that examination has been conducted to date.

As to the reasons listed by the Official Action to support the restriction requirement, it is submitted that none of the reasons are applicable in the present application. In this regard, the Official Action indicates that different prior art may be applicable to different groups of claims and/or that different non-prior art issues may arise with respect to the different groups of claims. As evidenced by the prior Official Action, the same prior art was applied to the claims of each group and no different non-prior art issues were put forward with respect to the different groups of claims. Further, although the restriction requirement now identifies different classifications for the different groups of claims, the prior search and examination of all of the claims suggest that the different groups of claims have not acquired a separate status in the art due to their different classification or divergent subject matter and do not require a different field of search, as also listed by the Official Action in support of the restriction requirement

Accordingly, the restriction requirement is traversed and it is submitted that all of the claims should continue to be substantively examined in the present application. Notwithstanding the foregoing traversal and in compliance with the requirements, Applicant provisionally elects, with traverse, to continue to prosecute the claims of Group I, that is, Claims 1-12, 14-30, 39-45, 51, 53 and 54. Notwithstanding the election, Applicant expressly reserves the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

It is also noted that several of the claims have been amended for purposes of clarification. In this regard, it is noted that Claims 1, 16, 19, 41-44, 51 and 54 have been amended.

### **CONCLUSION**

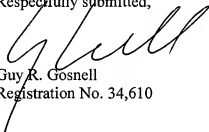
In view of the amendments and remarks presented above, Applicant respectfully submits that all of the claims in the present application should continue to be examined and, indeed, are in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the

Application No.: 10/091,038  
Amendment Dated June 19, 2009  
Reply to Office Action of May 19, 2009

Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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LEGAL02/31370636v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON JUNE 19, 2009.